

ARKANSAS SUPREME COURT

No. CR 98-1167

RICKY LEE SCOTT
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 4, 2008

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF CROSS
COUNTY, CR 96-61]

PETITION DENIED.

PER CURIAM

In 1998, a jury found petitioner Ricky Lee Scott guilty of murder in the first degree and sentenced him to life imprisonment in the Arkansas Department of Correction. This court affirmed the judgment. *Scott v. State*, 337 Ark. 320, 989 S.W.2d 891 (1999). Petitioner now brings a pro se petition in which he requests permission to proceed in the trial court with a petition for writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

Petitioner has previously filed a number of other requests for postconviction relief, including a previous petition for the relief now requested, none of which were ultimately successful. *See Scott v. State*, ___ Ark. ___, ___ S.W.3d ___ (Mar. 6, 2008) (per curiam) (dismissing appeal of denial of

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

petition for writ of habeas corpus under Act 1780 of 2001 Acts of Arkansas); *Scott v. State*, CR 98-1167 (Ark. Oct. 12, 2006) (per curiam) (denial of petition to reinvest jurisdiction in trial court to consider a petition for writ of error coram nobis); *Scott v. State*, CR 06-10 (Ark. Jan. 26, 2006) (per curiam) (denial of motion for rule on clerk in appeal of motion to vacate judgment); *Scott v. State*, 355 Ark. 485, 139 S.W.3d 511 (2003) (affirming denial of relief on petition under Arkansas Rule of Criminal Procedure 37.1). In this latest petition, petitioner alleges grounds in support of reinvesting jurisdiction in the trial court based upon what he claims are violations of the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963), in that he contends that evidence, a summary of a conversation by a field investigator assigned to the case and certain reports, was withheld by the prosecution. In addition, petitioner asserts that inadmissible evidence was taken into deliberations and considered by the jury.

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The writ is allowed only under compelling circumstances to achieve justice and to address

errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.* at 583, 986 S.W.2d at 409. Here, petitioner first asserts that evidence was withheld by the prosecutor.

There are three elements of a *Brady* violation, as follows: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; (3) prejudice must have ensued. *Larimore*, 341 Ark. at 404, 17 S.W.3d at 91. As a part of our review of a decision on a petition for writ of error coram nobis that makes such a claim, we determine whether there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the claimed exculpatory evidence been disclosed at trial. *See Larimore*, 341 Ark. at 408, 17 S.W.3d at 94.

Although petitioner claims that the documents that he alleges to be suppressed are newly discovered, he does not provide a showing that those documents were suppressed. Petitioner asserts that he obtained the documents through a request to the Arkansas State Crime Laboratory that was approved by the prosecuting attorney's office. Petitioner does not present any facts indicating that those documents were not contained in the lab's or prosecution's files at the time of the trial or that defense counsel was not made aware of the documents.

In addition, the evidence that petitioner alleges was suppressed is not sufficient for us to determine that there is a reasonable probability that the judgment of conviction would not have been

rendered if that evidence had been disclosed at trial. Petitioner contends that the information contained in the documents would have impeached three of the witnesses. The summary by the investigating officer appears to indicate that someone had made a statement about an argument between the victim's aunt and the murderer, and only described the murderer as an "unidentified male." The reports provided the identity of some of the investigating officers and confirmed the release of evidence and reports to those officers. Even if one of the investigating officers had documented a statement that was not entirely consistent with later accounts from a witness to the shooting, it is not apparent that the information presented here was in any way valuable for the purpose of impeaching any of the witnesses who appeared at trial, or would have discredited that testimony. Petitioner has not met his burden to show that material evidence was suppressed by the prosecution.

As to petitioner's assertion that inadmissible evidence was taken into deliberations and considered by the jury, we note that petitioner cites to the trial record to support his claim. The evidence taken into the jury room was on record and not hidden. There was therefore no fundamental error of fact extrinsic to the record. Petitioner's claims do not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis, and we therefore deny the petition.

Petition denied.